

**NO. PD-0853-19**

**IN THE COURT OF CRIMINAL APPEALS  
OF TEXAS**

FILED  
COURT OF CRIMINAL APPEALS  
1/27/2020  
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ROBERT HERRON  
Defendant/Appellant,

vs.

THE STATE OF TEXAS  
Plaintiff/Appellee.

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DEFENDANT/APPELLANT'S ANSWER  
TO THE STATES BRIEF FOR DISCRETIONARY REVIEW

FROM THE COURT OF APPEALS EIGHTH DISTRICT OF TEXAS  
CAUSE NUMBER 08-17-00239-CR

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## **NAMES OF JUDGES, PARTIES AND COUNSEL**

### **1. Eighth Court of Appeals:**

Honorable Chief Justice Brian Quinn(sitting by assignment); Justice Yvonne T. Rodriguez and Justice Gina M. Palafox.

### **2. Trial Court:**

Hon. Francisco S. Dominguez, 205th Judicial District Court of El Paso County Texas. 500 E. San Antonio, 10th Floor, El Paso, Texas 79901

### **3. Defendant/Appellant:**

Mr. Robert Herron, No. 05285940 Texas Department of Corrections, 13055 FM 3522 Abilene, Texas 79601

### **4. Plaintiff/Appellee:**

Mr. Jaime Esparza, District Attorney of the 34th Judicial District Attorney's Office.

At trial: Assistant District Attorney Ms. Karla Munoz and Assistant District Attorney Ms. Alyssa E. Nava, 500 East San Antonio, 2nd Floor El Paso, Texas 79901.

On appeal to the Eighth Court of Appeals: Mr. Jaime Esparza and Ms. Raquel Lopez, 500 East San Antonio, 2nd Floor El Paso, Texas 79901.

**5. Defendant's Trial Counsel and on Appeal to the Eighth Court of Appeals** (by appointment to both): Mr. Kenneth del Valle, 8407 Alameda Avenue, El Paso, Texas 79901

/s/ Ken del Valle

Kenneth del Valle

## **STATEMENT REGARDING ORAL ARGUMENT**

This Honorable Court has stated that oral argument will not be permitted.

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Tex. Code. Crim. Proc. Art. 62.053..... Throughout

## **STATEMENT OF JURISDICTION AND PROCEDURAL HISTORY**

On August 2, 2016 Robert Herron was indicted for failure to register as a sex offender. (CR.7)

The Indictment charged Herron with failure to register as a sex offender, “... with the local law enforcement authority to-wit: El Paso County Sheriff... ”.

Herron waived a jury trial and was found guilty as charged after a bench trial. The trial Court sentenced Herron to twenty five years confinement pursuant to the habitualization allegations in the Indictment. (CR.7, 87)

Herron filed a timely notice of appeal. (CR.92, 93)

The Eight Court of Appeals reversed Herron’s conviction and rendered a judgement of acquittal. See *Herron v. State*, No. 08-17-00239, 2019 WL 3451031 (Tex. App. El Paso July 31, 2019).

The Eighth Court of Appeals found that Herron had no duty to register with the “El Paso County Sheriff”, as alleged in the Indictment, because prior to leaving prison Herron was ordered to register with the “Horizon City Police Department, 14999 Derrington Rd. Unit 7, Horizon City, TX 79926.”

The State has filed this request for discretionary review.



## **COURSE OF THE CASE AT THE TRIAL COURT**

### **COURSE AND PROCEEDINGS IN THE 205TH DISTRICT COURT.**

On August 2, 2016 Herron was indicted in the 205th District Court of El Paso, County Texas. In the one count Indictment Herron was charged pursuant to Tex. Code. Crim. Proc. Art 62.051 with being a sex offender required to register annually with failure to report to the "El Paso County Sheriff, in the county where the defendant resided or intended to reside for more than seven days, to wit: El Paso..." (CR 7)

On April 13, 2017 Herron filed a Motion to Dismiss for lack of Venue.

On July 26, 2017 Herron filed a First Amended Motion to Dismiss for Want of Venue, (CR 43)

Argument on the motion(s) was heard on July 26, 2017 and the motion(s) was denied.

A bench trial was held on November 14, 2017 and Herron was found guilty by the Court and sentenced to twenty-five years imprisonment.

On November 15, 2017 Herron filed a Notice of Appeal. (CR 92)

## **STATEMENT OF ISSUES**

There was a fatal variance between the pleadings and the proofs.

Herron was charged and found guilty of failing to report to and to register with the "El Paso County Sheriff's Department" when the evidence showed he was in fact supposed to report to and register with the "Horizon City Police Department, 14999 Unit U, Horizon City, TX 79928".

There was no evidence adduced at trial that Herron failed to report to "Horizon City Police Department, 14999 Unit U, Horizon City, TX 79928".

There was no requirement by Herron to register with the El Paso County Sheriff.

Thus the Eighth Court of Appeals correctly reversed and entered a judgement of acquittal.

## STATEMENT OF THE CASE

### A. Statement of facts:

Note: Herron was twice released and twice ordered to report. This case arises out of the second time Herron was released and ordered to report.

**First release:** On February 2, 2016 Herron, a person required to register annually pursuant Tex. Code. Crim. Proc. Art. 62.051, was released on parole from TDC. (RR 17 lines 6 through 9)

Prior to his release on parole – on **February 2, 2016** Herron signed the required Tex. Code. Crim. Proc. Art. 62.053 “ Pre-Release Notification Form ” that ordered him to report to “TX0710000/ El Paso County Sheriff's Office, 3850 Justice Dr. El Paso County, TX 79938”. On the same form we see that the registration requirement is annual. (State's Exhibit 3)

On February 3, 2016 Herron reported to the designated halfway house where he had been assigned to reside. (RR 16 lines 1 through 11)

On February 3, 2016 a warrant issued against Herron on the technical violation of GPS rules. (RR 45 lines 7 through 9)

On **February 4, 2016** Herron was properly registered as a sex offender with the El Paso County Sheriff's Office in El Paso County, Texas. (RR 16 lines 5 through 18)

Deputy Eduardo Gutierrez of the El Paso County Sheriff's Office personally saw to the registration and signed the aforementioned State's Exhibit 3, (RR 16 lines 5 through 18).

Additionally, immediately after the February 4, 2016 registration Herron's parole was violated for the GPS technical violation.

Herron remained in the El Paso County Jail until March 7, 2016 when he was sent to a facility in Brownfield, Texas for punishment for the parole violation. Herron remained at the Brownfield facility until his release on June 27, 2016.

**The second release:** On **June 24, 2016**, a few days prior to his release from Brownfield, Herron again signed a " Pre-Release Notification Form " required by Tex. Code Crim Proc. Art. 62.053. (Defendant's Exhibit 1)

The June 24th Art. 62.053 form signed by Herron required him to report to

the "Horizon City Police Department, 14999 Darrington Rd. Unit 7, Horizon City, TX 79928". (Defendant's Exhibit 1)

However, rather than reporting as per the Art. 62.053 form Herron went home to Rockport, Texas where he was arrested in late July of 2016.

Herron was indicted in connection with the second release on August 2, 2016 for having failed to report to the El Paso County Sheriff on July 6, 2016. (CR 7) He was arrested and returned in custody to El Paso County to face the aforesaid charges.

Note that Herron was properly registered with the El Paso County Sheriff's Office as of February 4, 2016 after the first release. There was no proof adduced at trial that the February 4, 2016 registration had ever been terminated or rescinded.

## SUMMARY OF ARGUMENTS

There was a fatal variance between the pleadings and the proofs and thus the State failed to prove its case beyond a reasonable doubt.

The Tex. Code. Crim. Proc. Art. 62.053 Pre-Release Notification Form (Defendant's Exhibit 1) signed by Herron on **June 24, 2016** required Herron to report to the “Horizon City Police Department at 14999 Darrington Rd. Unit 7. Horizon City, Texas 79928.”

The indictment charged Herron with failure to report to the “El Paso County Sheriff.”

All the proofs at trial were in connection with Herron's failure to report (an act) to the El Paso County Sheriff – an act Herron was not required to perform pursuant to the Art. 62.053 Pre Release Notification Form he signed on June 24, 2016.

There was no proof adduced at trial that Herron had ever failed to report to “Horizon City Police Department at 14999 Darrington Rd. Unit 7. Horizon City, Texas 79928.”

## ARGUMENTS AND AUTHORITIES

I. THERE WAS A FATAL VARIANCE BETWEEN THE PLEADINGS AND THE PROOFS AND THUS THE EVIDENCE WAS LEGALLY INSUFFICIENT TO CONVICT HERRON.

### A. Standard of Review:

A claim of legal insufficiency of the evidence is viewed in light most favorable to the verdict to determine whether any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt.

See *Johnson v. State*, 23 S.W. 3d 1 at 7 (Tex. Crim. App. 2000); *Laster v State*, 275 S.W. 3d 512 at 517 (Tex. Crim. App. 2009).

Additionally, the analysis here is in part one of statutory interpretation and that calls for a de novo review. See *Williams v. State*, 253 S.W. 3d 673 at 677 (Tex. Crim. App. 2008) and *Clinton v. State*, 354 S.W. 3d 795 (Tex. Crim. App. 2011).

### B. Argument:

On August 2, 2016 Herron was indicted in the 205th District Court of El Paso, County Texas. In the one count Indictment Herron was charged pursuant to Tex. Code. Crim. Proc. Art. 62.051 with being a sex offender required to register annually with failure to report on July 6, 2016 to the "El Paso County

Sheriff..."

However, after his release from custody on June 27, 2016 Heron was not ordered or required to report to the El Paso County Sheriff.

The Art. 62.053 Pre Release Notification Form signed by Herron on **June 24, 2016** prior from to his release from prison on June 27, 2016 required him to report to the "**Horizon City Police Department, 14999 Darrington Rd. Unit 7, Horizon City, TX 79928**". (Defendant's exhibit 1)

In short Herron never received an Art. 62.053 notice that he was required to report to the El Paso County Sheriff after his release on June 27, 2016 and thus he was not required to do so. In fact, the Art. 62.053 form Herron acknowledged and signed on June 27, 2016 required him to report to the "Horizon City Police Department located at 14999 Darrington Rd. Unit 7, Horizon City, TX 79928." See Defendant's exhibit I – signed and acknowledged by Herron on June 24, 2016.

There was no evidence presented at trial that Herron failed to report to Horizon City Police Department located at 14999 Darrington Rd. Unit 7, Horizon City, TX 79928 – nor was Herron charged with that.

All the evidence presented at trial was in connection with Herron's failure to report to the El Paso County Sheriff – but pursuant to the Art. 62.053 form he



signed on June 24th Herron was never required to have done so.

The documentary proof presented by the State in connection with Herron's supposed duty to re register after his June 27th release was the Art. 62.053 Pre-Release Notification Form dated June 24, 2016. But that form did not require Herron to register with the law enforcement agency or at the address stated in the Indictment.

It was and continuous to be amazing to undersigned that the State indicted and then tried a case that alleged failure to perform an act that Herron was never required to perform nor given notice of a duty to perform.

In *Byrd v. State*, 336 S.W. 3d 242 (Tex. Crim. App. 2011) the Court adopted the legal sufficiency standard of federal due process articulated in *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979) to analyze legal sufficiency of the evidence cases in Texas.

*Byrd* at 246 states that due process "requires that the State prove, beyond a reasonable doubt, every element of the crime charged."

That, we submit, means that the State had the duty to prove beyond a reasonable doubt that pursuant to Art. 62.053 Herron was required to report to the El Paso County Sheriff as alleged in the Indictment.

But Herron, as is plain from the June 24th Art. 62.053 Pre Release Notification Form, was not required to do so. So.... the legal obligation to report to the El Paso County Sheriff – simply never existed.

The State put all of its eggs in the El Paso County Sheriff's basket but it was the wrong basket.

Apparently the State failed to review the June 24th Art. 62.053 form before indicting and failed to note that Herron was at that time ordered to report to a different place – they just didn't do their homework and review the facts before indicting.

*Byrd* at 247 states that: "A variance of this type is actually a failure of proof because the indictment sets out one distinct offense, but the proof shows an entirely different offense."

In Herron's case the State proved he didn't report to the El Paso County Sheriff – but he wasn't supposed to. He was supposed to report to the Horizon City Police Department.

However, even more egregiously to due process norms, the State failed to even address in any way the requirement of where Herron was actually supposed to report and to whom he was supposed to report. However, even if the State had

done so they would have been hung by their own petard because those proofs would have been contrary to the charge in the Indictment.

So, not only was there a material variance between the charge and the proofs – in this case there were no other proofs, just the wrong charge.

*Byrd* at 250 states that we analyze the materiality of a defect in an indictment by looking at the essential elements of a particular criminal offense and the hypothetically correct jury charge under the indictment.

Here, there can be no doubt that a specific element of the offense and hypothetical jury charge would be that Herron had received proper notice of his obligation to report to the El Paso County Sheriff on June 24, 2016 as per the Art. 62.053 form he signed that day – but there was never any such notice given to Herron on the Art. 62.053 form he signed on June 24th.

On the contrary, on June 24th Herron was given different instructions in the Art. 62.053 Pre Release Notification Form – to report to the Horizon City Police Department – in the established municipality of Horizon City, Texas.

Tex. Code. Crim. Proc. Art. 62.051 is the sex offender requirement to register part of the law. Tex. Code. Crim. Proc. Art. 62.053 is the notice of the requirement to the registrant.

That is why those subject to the registration requirement sign the Art. 62.053 Pre Release Notification Form– so they cannot later claim that they were not given proper notice of where and to whom they must report. The two rules work in conjunction with each other – one imposes the requirement to register and the other gives proper and fair notice of the requirement.

Here Herron was never given notice that he had to report to the El Paso County Sheriff after his release on June 27, 2016. Yet, that is what he was indicted for and found guilty of.

There can be no other theory or alternate theory of liability here. In *Clinton v. State*, 354 S W. 3d 795 (Tex. Crim. App. 2011) the Court at 799 clearly stated that in cases such as Herron's the law for purposes of the hypothetically correct jury charge is the single method alleged in the indictment – and the indictment here charged Herron with failure to report to the El Paso County Sheriff, a requirement he had no notice of – especially disturbing when proof of proper notice pursuant to Art. 62.053 is an essential element of the offense.

Herron was found guilty of not complying with an obligation he was never ordered to comply with and never given proper notice of.

By way of analogy – Herron was ordered to go through door number one

and found guilty of having failed to go through door number two without ever having been told he should go through door number two. That, we respectfully submit, is a fundamental and disturbing violation of due process.

On the variance between the pleadings and the proofs alone Herron's conviction should have been reversed; that it is aggravated by the failure of due process notice cries out for sustaining the decision of the Eighth Court of Appeals.

Tracking the Indictment language, Herron was convicted of "**knowingly and intentionally**" failing to report to the El Paso County Sheriff. That is a specific intent crime. But how could Herron have known he was supposed to report the El Paso County Sheriff when on June 24, 2016 he was ordered to report to the Horizon City Police Department?

And how could Herron have **knowingly** formulated the **intent** to fail to do something he was not given proper notice that he had to do?

And so the essential element of any specific intent crime "**knowingly and intentionally**" was never proved up by the State – Herron had to have had the specific intent to not report to the El Paso County Sheriff's Office after his release on June 27, 2016 – but Herron could not have knowingly formulated the intent to not report to the El Paso County Sheriff's Department... because he never received

any such notice he had to do so.

How can one knowingly and intentionally fail to complete an obligation one has no knowledge of? Specially when one is given a very different obligation? The Indictment charged the wrong offense.

The State now argues that Herron should have known that he had to report to the El Paso County Sheriff...

First: Herron was already registered with the El Paso County Sheriff. Herron was registered by Deputy Eduardo Gutierrez on February 4, 2016. That registration was good for a whole year... and there was no proof adduced at trial that Herron was ever notified that the February 4th registration was somehow made invalid or rescinded by his return to prison for the GPS violation.

Second: Imagine the confusion if Art. 62.051 registrants registered where they chose to register rather than the unit or department where they are ordered to register on the Art. 62.053 Pre Release Notification Form they sign... there would be no tracking them, specially in counties with several municipalities.

Third: Herron is not a mind reader as the States' theory would require him to be. He was told to report to a specific location. The State now argues that Herron should have looked beyond the four corners of the document he signed;

read the mind of the El Paso County authorities as to what they really meant; figured out the governmental organization of El Paso County and its municipalities – and then made the correct choice. All that instead of reporting to the indicated address in the Art. 62.053 form.

### THE TRIAL COURT'S FINDINGS WERE IN ERROR

In making its findings of guilty the Trial Court relied on the fourth paragraph initialed by Herron on the first page of the Art. 62.053 prerelease form signed by Herron on June 24th.

Reading from the Art. 62.053 form signed by Herron on June 24, 2016 the Trial Court said: "....if there is a municipality he's to report to the chief of police.." (And in this case there is a municipality- Horizon City) "... And if there isn't then he can report to the sheriff. But it further goes on to clarify that the local law enforcement or centralized registration authority, as designated by the Commissioner's Court in the municipality or the county where the defendant resides is the proper place. And at the end of the day, the El Paso County Sheriff's Office was the appropriate law enforcement authority where he was to report." (RR 77, 78)

We respectfully submit that the Trial Court's logic is erroneous for the

following reasons:

**First**, Horizon City is a municipality with its own Chief of Police empowered to register sex offenders. That is the authority and place Herron was required to register at.

**Second**, the Trial Court's reasoning that Herron should have known that the default registration authority was the El Paso County Sheriff's Office is absolutely wrong.

There was no proof adduced at trial that the "Commissioner's Court" ever designated the El Paso County Sheriff as the default registration authority – the Trial Court just made that up after recessing after arguments and before rendering a decision. And in any event, there was no need for a default registering authority because the Horizon City Police Department had and still has registering authority – otherwise, why would Herron have been sent there?

On the June 24, 2016 Art. 62.053 form Herron acknowledged and signed.... Heron was not sent to whom he might have thought was the default registration authority, but rather, he was very specifically sent to the Horizon City Police Department – which flies in the face of the Trial Court's reasoning because as the Trial Court itself stated when trying to carve out an exception "...if there is a



municipality he's to report to the chief of police..”

That, we respectfully submit, obviously includes the Horizon City Police Department – a municipality within the county with its own police department and chief of police.

Imagine if sex offenders regularly ignored the Art 62.053 mandate of what specific authority to register with and ignored what specific location to register at and instead registered with whom they decided or "should have known" was the appropriate default authority.

Under the Trial court's reasoning that would be okay.

**Third**, such finding by the Trial Court ignores the constitutional due process requirement of what specific acts are expected of an individual in order to comply with the law.

Most importantly the Trial Court's reasoning is an impermissible expansion of the statutory language that alters the definition of the offense.

In *Ex Parte Michael Charles McDermott*, No. 05-16-01357-CR, Court of Appeals Fifth District of Texas (Dallas, May 11, 2017) articulated the issue succinctly:

"The Due Process Clause of the Fifth Amendment is applicable to the states

by the Fourteenth Amendment. See *Ex parte Bradshaw*, 501 S.W 3d 665, 677 (Tex. App. Dallas 2016, pet. ref'd). Due process requires criminal statutes to provide fair notice of what conduct is forbidden before making the conduct criminal so that individuals have, at the time they engage in conduct, fair warning of whether their conduct will give rise to criminal penalties. Deprivation of the right to fair notice may result from (1) vague statutory language that fails to specify a standard of conduct and a standard for determining when the statute is violated; or (2) an unforeseeable and retroactive judicial expansion of statutory language that alters the definition of an offense, the range of punishment, or any substantive defense."

We respectfully submit that the Trial Court's reasons is the exact same sort of prohibited judicial expansion discussed in *McDermott*.

**Fourth**, the Trial Court's ruling adds a "**should have known**" element to the "**intentionally and knowingly**" language of the Indictment and it is another impermissible modification of the language in this Indictment and more egregiously adds an element to the offense that does not exist in the statute.

*See supra, McDermott.*

And that is what the State is asking this Honorable Court to do.

There can be no getting away that Herron was not required to report to the El Paso County Sheriff after his release on June 27, 2016.

There can be no getting around that the language in the Indictment fails to take note of the Art 62.053 document signed by Herron on June 24, 2016.

There can be no getting away the fact that Herron was improvidently indicted with failure to perform an act he was not legally obligated to perform – that of reporting to the El Paso County Sheriff's Office.

There can be no getting away from the fact that Herron was wrongfully convicted.

Additionally, we must continuously keep in mind that Herron had previously and properly registered with the El Paso County Sheriff on February 4, 2016 (RR State's Exhibit 3) Herron's birth day falls on January 14th (RR State's Exhibit 3) Herron is required to register annually. (RR State's Exhibit 3)

And... there was no proof adduced at trial that Herron was required to re-register after his release from confinement in June 26, 2016.

The First Art 62.053 Pre Release Notification Form signed by Herron on **February 2, 2016** instructed him to report to a specific address and to a specific law enforcement unit: **TX0710000\ El Paso County Sheriff's Office, 3850**

**Justice Drive, El Paso, TX 79938. (Addendum 1)**

The Second Art 62.053 Pre Release Notification Form signed by Herron on **June 24, 2016** instructed him to report to a specific address and to a specific law enforcement unit: **Horizon City Police Department, 14999 Darington Rd Unit 7, Horizon City, TX 79928. (Addendum 2)**

Those are both very specific instructions.

The Pre Release Notification Forms give a very specific instruction and, it may be said, a very specific order to the registrant as to which law enforcement agency and to what address the registrant must report... the State now wants this Honorable Court to find that that very specific instruction can be ignored.

Neither the police nor prosecutors nor trial courts can invent new laws nor add elements of an offense to existing laws – much less indict and convict a defendant for violations of those non existing laws.

Based on the foregoing we respectfully submit that no rational trier of fact could have found Herron guilty of having *knowingly and intentionally* failed to report to the El Paso County Sheriff's Office on July 6, 2016 when he was not given an Art. 62.053 notice of a requirement to do so... and when the Art. 62.053

notice Herron was given actually required that he register elsewhere.

All any rational trier of fact has to do is hold the Indictment up next to the two Art. 62.053 forms signed by Herron on February 4, 2016 and June 24 , 2016 to realize that Herron received no notice to report to the El Paso County Sheriff on June 24th and thus was under no legal obligation to do so.

In its brief to this Honorable Court the State argues that Detective Gutierrez testified that Herron was supposed to report to the “The El Paso County Sheriff’s Office” as some show of proof that Herron was supposed to do that and failed to do so.

With all due respect to Detective Gutierrez – just cause he says so... doesn’t make it so – he is not the legislature.

Apparently Detective Gutierrez was among those that failed to read the fine print on the June 4, 2016 Pre Release Notification Form.

The fact that Herron was supposed to report to the Horizon City Police Department after his June 26th release was completely overlooked by the State at trial and did not become an issue until undersigned counsel brought it up during the defense closing. So... all of the State’s evidence at trial was geared towards proving that Herron had failed to report to the El Paso County Sheriff’s

Department.

When confronted with the issue of their mistake at the time of Defendant's closing the State did not move to re open – thus waived.

By that point in the trial it was patently obvious that the State had not carefully examined its own proofs, more specifically, its chief exhibit, to wit: the June 4, 2016 Pre Release Notification Form – eagerly adopted by the defense just prior to closing.

No matter how the States frames the issues there is no getting away from the fact the State made a fatal mistake in indicting, proving up and convicting Herron for failure to perform an act he was not required to do.

Here the State indicted (pleadings) Herron with failure to report to the El Paso County Sheriff's Office... yet the State's own chief exhibit (proofs) – The Art. 62.053 Pre Release Notification Form dated June 24, 2016 – showed that Herron was required to report to the Horizon City Police Department, another law enforcement unit at another location.

The State has an obligation to examine its pleadings closely, to compare the allegation in the pleadings to the State's proof at trial. In this case the State did not do so and now looks to this Honorable Court to correct their error.

With all due respect, courts of appeal are not constituted to fix prosecutorial mistakes.

The Eight Circuit Court of Appeals refused to do so and, we respectfully submit, so should this Honorable Court.

PRAYER FOR RELIEF

**Wherefore**, based on the foregoing Defendant/Appellant, Robert Herron prays this Honorable Court sustain the ruling of the Eighth Court of Appeals.

Respectfully submitted.

/s/ Ken del Valle

Kenneth del Valle

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CERTIFICATE OF SERVICE

I, Kenneth del Valle, an attorney, do hereby certify that on January 27, 2020 I caused to be filed the above document through the Texas E File system that will notify all parties entitled to service and notice of filing. And that I served a copy upon Mr. Robert Herron, No. 05285940 Texas Department of Corrections, 13055 FM 3522, Abilene, Texas 79601 by U.S. mail.

/s/ Ken del Valle

Kenneth del Valle

## CERTIFICATE OF COMPLIANCE

This brief complies with the type and volume limitation of Tex. R. App. P. 9.4 (1) (1) (B) because this brief contains less than 15,000 words excluding the parts of the brief exempted by Tex. R. App. P. 94 (i) (1). Pursuant to Tex. R. App. P. 9.4 (i) (3) this brief contains 5,178 words.

/s/ Ken del Valle

Kenneth del Valle

# ADDENDUM 1

**PRE-RELEASE NOTIFICATION FORM  
TEXAS SEX OFFENDER REGISTRATION PROGRAM**

CS-32 (Rev. 10-15)

ARTICLE 62.053, Code of Criminal Procedure - Release or Discharge from a Penal Institution or Release to Community Supervision, Parole, Mandatory Supervision or the Law Enforcement Registering Authority



Off Name (Last, First, Middle) Herron, Robert Lee									
Date of Birth	Sex	Race	Hgt	Wgt	Eyes	Hair	Social Security Number		
04/19/1990	M	B	5' 11"	215	BRO	BLK			
DL Number	State	ID Number	State	SSN Number	REG Number	TDCJ ID Number			
04193920	TX	05285940	TX	830430XA5	1783413				
Offense (Title) and Statute		State	Choose	Federal	Disposition Date	Discharge Date	Victim(s) Sex/Age		
11990004 - 22.021(a)(2)(B) PC		TX			08/17/1995	05/11/2000	F/14		
*If not statutorily required to register, check box <input type="checkbox"/> and enter discharge date: none/any.									
Offense (Title) and Statute		State	Choose	Federal	Disposition Date	Discharge Date	Victim(s) Sex/Age		
*If not statutorily required to register, check box <input type="checkbox"/> and enter discharge date: none/any.									
<b>PROHIBITED EMPLOYMENT, ARTICLE 62.053, Code of Criminal Procedure</b> Answer "Yes" or "No" to the following questions to determine if occupational restrictions apply.									
1. Was the conviction, adjudication, or deferred adjudication on or after 9/01/2013?					Yes	No	X		
2. Was the offender 17 years of age or older at the time of the offense?					Yes	No	X		
3. Was there an affirmative finding made that the victim or intended victim was 13 years of age or younger at the time of the offense?					Yes	No	X		
4. Was this a Sexually Violent Offense as defined by Article 62.001, C.C.P.?					Yes	No	X		
5. Was this offense tried in a Texas court of law?					Yes	No	X		
If the answer is "Yes" to the preceding five questions, complete the CR-32PE form.									
Length of Duty:		Lifetime		ICC ending registration date					
Notification requirement:		Annually							
Assigned risk level:		Low		If "C" for Civil Commitment please provide date of judgement order: _____					
Address or description of the geographical location where person notified expects to reside: (Full street address, city, state, zip code)									
1700 Horizon, El Paso, TX 79928									

ADDENDUM 1

Chapter 62, Code of Criminal Procedure, requires me to register as a sex offender. I understand that:

☒ **Initial Verification of Registration Upon Release:** Not later than the 7th day after 02/04/2016 (date of release/placement on community supervision or juvenile probation), I must personally appear at the following local law enforcement authority to verify and complete my registration:

☒ **Registration Verification:**

Local Law Enforcement Agency Name: TX07100001 El Paso County Sheriff's Office

Agency Address/City/State/Zip: 3850 Justice Dr El Paso, TX 79938

Notification to Authority for Campus Security Agency: \_\_\_\_\_

Agency Address/City/State/Zip: \_\_\_\_\_

☒ **IF I have a juvenile probation officer, community supervision and corrections department officer, or parole officer and I do not move to an intended residence, I must report to my supervising officer not later than the 7th day after the date I was released.**

☒ **Registration:** I am required to register with the local law enforcement authority in any municipality (chief of police) where I reside or intend to reside for more than seven days. If my residence is not in a municipality, I must register with the local law enforcement authority of the county (sheriff) where I reside or intend to reside for more than seven days. Registration must be completed not later than the 7th day after the date of arrival in the municipality or county. The local law enforcement authority or the centralized registration authority, as designated by a commissioner's court in the municipality or county, reside in will be my primary registration authority. The duration of my duty to register is for the period of time indicated above.


☒ **Periodic Verification of Registration:** I must personally appear at my primary registration authority and verify my registration information annually, every 90 days, or every 90 days, as indicated above.

☒ **Additional information as required by the Department:** I am required to report to my primary registration authority any additional information required by the Texas Department of Public Safety.

☒ **Change of Address:** Not later than the 7th day before I move to a new residence in this state or another state, I must report in person to my primary registration authority and to any community supervision and correct this department officer, juvenile probation officer, or parole officer supervising me and inform that authority and officer of my intended move. If my new residence is located in this state, not later than the 7th day after changing address, I must report in person and register with the local law enforcement authority in the municipality or county where my new residence is.

located. If my new residence is located in another state, not later than the 10th day after the date I arrive in the other state, I must register with the law enforcement agency that is identified by the Texas Department of Public Safety as the agency designated by that state to receive registration information. If I do not move to an intended address by the end of the 7th day after my anticipated move date, I shall report to my primary registration authority, and any supervising officer, weekly and provide an explanation regarding changes in my anticipated move date and intended address.

- Y1.1 **Lack of Address:** If I lack a physical address assigned by a governmental entity, I must provide to the local law enforcement authority a detailed description of the geographical location where I reside or intend to reside for more than 7 days. I must report in person to the local law enforcement authority not less than once in each 30 day period to confirm my location until a physical address can be provided.
- Y1.2 **Texas DL/ID Requirement:** Not later than the 30th day after the date I am released/placed on community supervision or juvenile probation, I shall apply for the issuance of, as applicable, an annually renewable Texas driver license or personal identification certificate from a Texas Department of Public Safety, Driver License Office. Failure to apply for an annually renewable Texas driver license or personal identification certificate will result in the automatic revocation of any existing license or certificate issued by the Texas Department of Public Safety. I shall maintain an annually renewable driver license or personal identification certificate for as long as I am required to register.
- Y1.3 **Status Changes:** Not later than the 7th day after the date of the change, I shall report to my primary registration authority any change in the following: my name (includes a request for name change and a denial of a request), my physical health (includes hospitalization), job status (includes beginning and leaving employment and changing work locations), and educational status (includes a transfer from one educational facility to another).
- Y1.4 **Change in On-Line Identifiers:** Not later than the 7th day, I shall report any changes to online identifiers or establishment of any new online identifier not already included on my registration form to my primary registration authority in the manner prescribed by the authority.
- Y1.5 **Institutions of Higher Education:** If I intend to be employed, carry on a vocation, or be a student at a public or private institution of higher education in this state, I must notify the authority for campus security for the institution and my primary registration authority of that fact not later than the 7th day after the date I begin to work or attend school at the institution. If I stop working or attending school at an institution of higher education, I must report that fact to the authority for campus security and my primary registration authority not later than the 7th day after the day I stop working or attending school at the institution. If the institution of higher education does not have an authority for campus security, I must provide the required notice to the local law enforcement authority of the municipality or county in which the institution is located. If the institution of higher education is located in another state, I must notify any authority for campus security for that institution not later than the 10th day after the date I begin to work or attend school.
- Y1.6 **Workers and Students:** If I reside outside of this state and intend to work or attend school in this state, not later than the 7th day after the date I begin to work or attend school, I must register and verify registration with the local law enforcement authority in the municipality or county in which I work or attend school. If I reside in this state and work or attend school in another state, I must register with the law enforcement agency that is identified by the Texas Department of Public Safety as the agency designated by that state to receive registration information not later than the 10th day after the date I begin to work or attend school.
- Y1.7 **Visiting Locations:** If on at least 3 occasions during any month I spend more than 48 consecutive hours in a municipality or county other than the municipality or county I am registered in, I must report that fact to the local law enforcement authority of the municipality or county I am visiting. This notice must be provided before the last day of the month the visits occur.
- Y1.8 **Postcard Notification Costs:** If I am assigned a high risk level or am civilly committed as a sexually violent offender, I shall reimburse the Texas Department of Public Safety all costs incurred by the DPS in providing postcard notification to my community of residence (Not applicable to an adjudication of delinquent conduct).
- Y1.9 **Local Law Enforcement Authority Policies:** All registrations, verifications, and notifications must be provided in person within the time periods indicated above. If I appear within a time period indicated above and the local law enforcement authority instructs me that their policy requires me to appear at a later date, I will appear on that later date to register, verify, or to provide a notification, as applicable.
- Y1.10 **DNA Specimen:** A person required to register under this chapter shall comply with a request for a DNA specimen made by a law enforcement agency under Section 411.1473, Government Code.
- Y1.11 **Criminal Penalties:** My failure to comply with any requirement imposed upon me by Chapter 62, Code of Criminal Procedure, is a felony offense. Further, if I am on parole, community supervision, or juvenile probation, my failure to comply with any requirement imposed upon me by Chapter 62, Code of Criminal Procedure may result in the revocation of my parole, community supervision, or juvenile probation.

Robert Lee Henson		Right Thumb	
Printed Name of Person Notified		R	
Signature of Person Notified		T	
S.O.# 05285946	Offender Refused to Sign	H	
Person Notified	Offender Unable to Sign	U	
I certify that I notified the individual described above of the duty to register as required under Chapter 62, C.C.P.		M	
Eduardo Gutierrez		B	
Printed name and signature of notifying officer	02/04/2016		
El Paso County Sheriff's Office	TX0710000	(016) 538-2292	
Name of notifying agency	Agency CRI	Agency telephone number	

Please keep a copy of this form for your records. Please provide registrant with a copy of this form.  
 Forward a copy to the intended primary registration authority. Fax completed form to DPS, Sex Offender Compliance Unit, at 512/424-8434.  
 Mail original to: Sex Offender Registration Program, Texas Department of Public Safety - MSC 0230, PO BOX 4143, Austin, TX 78765-4143

# ADDENDUM 2

DBF  
EX#1



PRE-RELEASE NOTIFICATION FORM  
TEXAS SEX OFFENDER REGISTRATION PROGRAM

CR-39 (Rev. 12-13)

ARTICLE 62.053, Code of Criminal Procedure - Release or Discharge from a Penal Institution or Release to Community Supervision, Parole, Mandatory Supervision or the Law Enforcement Registering Authority

Full Name (Last, First, Middle) Herron, Robert Lee						
Date of Birth <u>mm/dd/yyyy</u>	Sex M	Race B	Hgt 5'11"	Wgt 215	Eyes BRO	Hair BLK
DL Number 04193392	State TX	ID Number	State	SSN Number 05285940	FBI Number 830430XA5	YOCJ-40 Number 01452336
Registering Offense (Title) Aggravated Sexual Assault of a Child		State TX	Disposition Date 08/17/1995	Sentence Received 5Y COM 000	Victim(s) Sex/Age F/14	
*If not statutorily required to register, check box <input type="checkbox"/> and enter discharge date <u>mm/dd/yyyy</u>						
Registering Offense (Title)		State	Disposition Date <u>mm/dd/yyyy</u>	Sentence Received	Victim(s) Sex/Age	
*If not statutorily required to register, check box <input type="checkbox"/> and enter discharge date <u>mm/dd/yyyy</u>						
PROHIBITED EMPLOYMENT, ARTICLE 62.053, Code of Criminal Procedure Answer "Yes" or "No" to the following questions to determine if occupational restrictions apply.						
1. Was the conviction, adjudication, or deferred adjudication on or after 8/01/2017?				Yes <input type="checkbox"/> No <input type="checkbox"/>		
2. Was the offender 17 years of age or older at the time of the offense?				Yes <input type="checkbox"/> No <input type="checkbox"/>		
3. Was there an affirmative finding made that the victim or intended victim was 13 years of age or younger at the time of the offense?				Yes <input type="checkbox"/> No <input type="checkbox"/>		
4. Was this a Sexually Violent Offense as defined by Article 62.001, C.C.P.?				Yes <input type="checkbox"/> No <input type="checkbox"/>		
5. Was this offense tried in a Texas court of law?				Yes <input type="checkbox"/> No <input type="checkbox"/>		
If the answer is "Yes" to the preceding five questions, complete the CR-32PB form.						
Duty to register expires: <input checked="" type="checkbox"/> Lifetime <input type="checkbox"/> 10 Yrs After Discharge <input type="checkbox"/> At Discharge (Court/Board Ordered)						
<input type="checkbox"/> 15 Yrs After Discharge <input type="checkbox"/> 25 Yrs After Discharge <input type="checkbox"/> ICC: ending registration date						
Verification requirement: <input checked="" type="checkbox"/> Annual (on birthday) <input type="checkbox"/> Every 90 Days <input type="checkbox"/> Every 30 Days						
Assigned risk level <u>1</u> If "C" for Civil Commitment please provide date of judgment order: <u>JUL 05 2018</u>						
Address or description of the geographical location where person notified expects to reside: (Full street address, city, state, zip code) 1700 Horizon BLVD North El Paso, Texas 79928						

RECEIVED  
TEXAS DPS  
JUL 05 2018

CRIME  
RECORDS SERVICE

ADDENDUM 2

- Chapter 62, Code of Criminal Procedure, requires me to register as a sex offender. I understand that:
- R-1 Initial Verification of Registration Upon Release: Not later than the 7th day after 08/27/2018 (date of release/placement on community supervision or juvenile probation), I must personally appear at the following local law enforcement authority to verify and complete my registration:
- R-11 Registration Verification
- Local Law Enforcement Agency Name Horizon City Police Department
- Agency Address/City/State/Zip 14999 Darrington Rd Unit 7, Horizon City, TX 79928
- Notification to Authority for Campus Security Agency: \_\_\_\_\_
- Agency Address/City/State/Zip: \_\_\_\_\_
- R-12 If I have a juvenile probation officer, community supervision and corrections department officer, or parole officer and I do not move to an intended residence, I must report to my supervising officer not later than the 7th day after the date I was released.
- R-13 Registration: I am required to register with the local law enforcement authority in any municipality (chief of police) where I reside or intend to reside for more than seven days. If my residence is not in a municipality, I must register with the local law enforcement authority of the county (sheriff) where I reside or intend to reside for more than seven days. Registration must be completed not later than the 7th day after the date of arrival in the municipality or county. The local law enforcement authority or the centralized registration authority, as designated by a commissioner's court, in the municipality or county I reside in will be my primary registration authority. The duration of my duty to register is for the period of time indicated above.
- P-14 Periodic Verification of Registration: I must personally appear in my primary registration authority and verify my registration information annually, every 90 days, or every 30 days, as indicated above.
- P-15 Additional Information as required by the Department: I am required to report to my primary registration authority any additional information required by the Texas Department of Public Safety including, but not limited to blood type, nearest relative's name and address, and the identification of any vehicle to which I have access.
- P-16 Change of Address: Not later than the 7th day before I move to a new residence in this state or another state, I must report in person to my primary registration authority and to any community supervision and corrections department officer, juvenile probation officer, or parole officer supervising

me and inform that authority and officer of my intended move. If my new residence is located in this state, not later than the 7th day after changing address, I must report in person and register with the local law enforcement authority in the municipality or county where my new residence is located. If my new residence is located in another state, not later than the 10th day after the date I arrive in the other state, I must register with the law enforcement agency that is identified by the Texas Department of Public Safety as the agency designated by that state to receive registration information. If I do not move to an intended residence, not later than the 7th day after my anticipated move date, I shall report to my primary registration authority and to any supervising officer supervising me.

2.4 Rel **Lack of Address:** If I lack a physical address assigned by a governmental entity, I must provide to the local law enforcement authority a detailed description of the geographical location where I reside or intend to reside for more than 7 days. I must report in person to the local law enforcement authority not less than once in each 30 day period to confirm my location until a physical address can be provided.

Rel **Texas DL/ID Requirement:** Not later than the 30th day after the date I am released from a penal institution/placed on community supervision or juvenile probation, I shall present this notice to the appropriate Texas Department of Public Safety, Driver License Office, and apply for the issuance of, as applicable, an annually renewable Texas driver license or personal identification certificate. Failure to apply for an annually renewable driver license or personal identification certificate will result in the revocation of any existing license or certificate issued by the Texas Department of Public Safety. I shall maintain an annually renewable driver license or personal identification certificate for as long as I am required to register.

Rel **Status Changes:** Not later than the 7th day after the date of the change, I shall report to my primary registration authority any change in the following: my name (includes a request for name change and a denial of a request), my physical health (includes hospitalization), job status (includes beginning and leaving employment and changing work locations), and educational status (includes a transfer from one educational facility to another).

Rel **Changes in On-Line Identifiers:** Not later than the 7th day, I shall report any changes to online identifiers or establishment of any new online identifier not already included on my registration form to my primary registration authority in the manner prescribed by the authority.

Rel **Institutions of Higher Education:** If I intend to be employed, carry on a vocation, or be a student at a public or private institution of higher education in this state, I must notify the authority for campus security for the institution and my primary registration authority of that fact not later than the 7th day after the date I begin to work or attend school at the institution. If I stop working or attending school at an institution of higher education, I must report that fact to the authority for campus security and my primary registration authority not later than the 7th day after the date I stop working or attending school at the institution. If the institution of higher education does not have an authority for campus security, I must provide the required notice to the local law enforcement authority of the municipality or county in which the institution is located. If the institution of higher education is located in another state, I must notify any authority for campus security for that institution not later than the 10th day after the date I begin to work or attend school.

Rel **Workers and Students:** If I reside outside of this state and intend to work or attend school in this state, not later than the 7th day after the date I begin to work or attend school, I must register and verify registration with the local law enforcement authority in the municipality or county in which I work or attend school. If I reside in this state and work or attend school in another state, I must register with the law enforcement agency that is identified by the Texas Department of Public Safety as the agency designated by that state to receive registration information not later than the 10th day after the date I begin to work or attend school.

Rel **Visiting Locations:** If on at least 3 occasions during any month I spend more than 48 consecutive hours in a municipality or county other than the municipality or county I am registered in, I must report that fact to the local law enforcement authority of the municipality or county I am visiting. This notice must be provided before the last day of the month the visits occur.

Rel **Postcard Notification Costs:** If I am assigned a High Risk level or am civilly committed as a sexually violent offender, I shall reimburse the Texas Department of Public Safety all costs incurred by the DPS in providing postcard notification to my community of residence (Not applicable to an adjudication of delinquent conduct).

Rel **Local Law Enforcement Authority Policies:** All registrations, verifications, and notifications must be provided in person within the time periods indicated above. If I appear within a time period indicated above and the local law enforcement authority instructs me that their policy requires me to appear at a later date, I will appear on that later date to register, verify, or to provide a notification, as applicable.

Rel **ONA Specimen:** A person required to register under this chapter shall comply with a request for a DNA specimen made by a law enforcement agency under Section 411.1473, Government Code.

Rel **Criminal Penalties:** My failure to comply with any requirement imposed upon me by Chapter 62, Code of Criminal Procedure, is a felony offense. Further, if I am on parole, community supervision, or juvenile probation, my failure to comply with any requirement imposed upon me by Chapter 62, Code of Criminal Procedure may result in the revocation of my parole, community supervision, or juvenile probation.

Robert Lee Herron

Printed Name of Person Notified

Signature of Person Notified

6-24-16

08/24/2016

Date

SD# 05285940

Offender Refused to Sign

Offender Unable to Sign

Person Notified

I certify that I notified the individual described above of the duty to register as required under Chapter 62, C.C.P.

Fernando Amadori

Printed name and signature of notifying officer

08/24/2016

Date of notification

TDCJ

Name of notifying agency

(800) 637-4032

Agency telephone number

RECEIVED  
TEXAS DPS

05 2016

CRIME

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Please keep a copy of this form for your records. Please provide registrant with a copy of this form. Forward a copy to the intended primary registration authority. If a completed form to DPS, See Offender Compliance Unit, at 512/434-5434. Mail original to: See Offender Registration Program, Texas Department of Public Safety - 545C 0228, PO BOX 4143, Austin, TX 78764-4143



20160003600-NA

INDICTMENT

JUDICIAL CASE NO. 2016-06338

9604208

CONTROL NO. 16-06409-CR

STATE OF TEXAS  
VS.  
ROBERT HERRON

Count Offense

1 SEX OFFENDERS DUTY TO REGISTER W/PREV CONV 1A1

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS

The Grand Jurors for the County of El Paso, State of Texas, duly organized as such, at the July Term, A.D., 2016, of the 120<sup>th</sup> Judicial District Court for said County, upon their oaths in said Court, present that on or about 6th day of July, 2016 and anterior to the presentment of this indictment, in the County of El Paso and State of Texas, ROBERT HERRON, hereinafter referred to as Defendant,

Did then and there, while being a person required to register with the local law enforcement authority to-wit: El Paso County Sheriff, in the county where the defendant resided or intended to reside for more than seven days, to-wit: El Paso, because of a reportable conviction for Aggravated Sexual Assault of a Child, intentionally or knowingly fail to register with the local law enforcement authority in said El Paso County.

And it is further presented in and to said Court, that before the commission of the offense alleged above, the defendant had theretofore been convicted of an offense under Article 62.102, Code of Criminal Procedure, in that on the 31st day of July, 2007 in the 347th District Court of Corpus Christi, Texas, in cause number CR07001667H, the defendant was convicted of the offense of Sex Offenders Duty To Register Life/Annually.

And it is further presented in and to said Court that, prior to the commission of the primary offense by the said Defendant, on the 16th day of December, 1997 in the 36th District Court, of Sinton County, Texas, in cause number A940071CR, the defendant was convicted of a felony offense, to-wit: Burglary of Vehicle, and said conviction became final prior to the commission of the primary offense.

And it is further presented in and to said Court that, prior to the commission of the offenses set out above, the defendant on the 15th day of March, 2012, in the 36th District Court, of Sinton County, Texas, in cause number A1131381CR, the defendant was convicted of a felony offense, to-wit: Man/Del CS PG 1 over 1G but under 4G, and said conviction became final prior to the commission of the offenses set forth above.

AGAINST THE PEACE AND DIGNITY OF THE STATE

Grand Jury Foreperson

Filed the

Aug 8 2016

By

Deputy

THE STATE OF TEXAS  
COUNTY OF EL PASO

I certify that the foregoing is a true and correct copy of the original indictment on file in my office. Given under my hand and seal of the court at my office in El Paso, Texas on the 8th day of August, 2016.

Norma Favela  
District Clerk  
El Paso County, Texas

By

Deputy

Bail Amount \$

ADDENDUM 3

7

# ADDENDUM 3